

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7474 OF 2007

Abaji Bidkar & Anr. Petitioners
V/s
The State of Maharashtra & Ors..... Respondents.

Mr.G.N.Salunke, Adv. For the petitioners.

Mr.R.M.Patne, AGP For the respondents.

CORAM: A.P.DESHPANDE, J.

11/10/07

PC:

The present petitioners claim to be members of the respondent No.4-Society. The process of election for electing managing committee of respondent No.4 is in progress. The present petitioners claim to have objected to the provisional voters' list on the ground that name of persons who are not eligible to be included in the provision list are so included. The objection to this effect was raised before respondent No.3-Assistant Registrar of Cooperative Societies. The Assistant Registrar Cooperative Societies by the impugned order has intimated the petitioners that he has no jurisdiction to entertain the said application raising objection to the inclusion of names of persons in the provisional voters list and thus advised the petitioners to approach appropriate forum. Aggrieved by this intimation the present writ petition has been filed. Two fold grievance is made, one that the Assistant Registrar has failed to exercise jurisdiction by not adjudicating the objection raised by the petitioner. Learned counsel for the petitioners has tried to contend that the Deputy Registrar is obliged to decide the objection by virtue of rule 56(c). Reliance placed on rule 56(c) is not proper in view of the fact that the said rule is comprised of Chapter VA of the Maharashtra

Cooperative Societies Rules 1961 and the said chapter regulates the election to the notified societies. Respondent No.4 herein is not notified society. As the learned counsel for the petitioner has failed to point out that the respondent No.3 is under a statutory obligation to decide the application writ of mandamus asked for directing the authority to decide the objection cannot be issued. Be it as it may, perusal of election programme clearly reveals that all stages in the election process are over and what remains is publication of list of contesting candidates which is scheduled tomorrow i.e. 12.10.07 and the actual voting counting and declaration of result is scheduled on 23.10.07. Having regard to the totality of facts and circumstances I decline to exercise discretion in entertaining this writ petition. In the result writ petition is summarily dismissed. At this stage learned counsel submits that the ballot papers of those voters whose inclusion in the voters list is objected to by the petitioner should be directed to be kept separately so that when the petitioner files an election petition it would be convenient for the Court dealing with election petition to decide the controversy otherwise election petition would be rendered infructuous. It is not necessary to pass any order at this stage more so, when the persons whose inclusion in the voters list is challenged are not impleaded as party-respondents as well. Without any notice to the respondents no relief is capable of being granted in the petition and it is not possible to decide the petition after issuance of notices to the respondents and other persons who are likely to be affected before conclusion of the election. In this view of the matter I decline to entertain this prayer as well. It is made clear that it shall be open for the petitioners to file appropriate election petition after declaration of results.

11.10.07